

Federal Communications Commission
Washington, DC 20554

Improving Agency Disclosure of Information
Executive Order 13392

Agency-Specific Plan

June 14, 2006

A. Overall Nature of the FCC's FOIA Operations.

The Federal Communications Commission (FCC) is an independent Federal regulatory agency which regulates interstate and foreign communications by wire and radio. 47 U.S.C. § 151. The FCC is organized into six operating Bureaus and ten staff offices. The FCC utilizes a decentralized approach in the management of its FOIA program, subject to centralized coordination by the Office of General Counsel and the Office of the Managing Director. The General Counsel serves as the Chief FOIA Officer and is responsible for overseeing the implementation of the FOIA. The Office of General Counsel also prepares administrative appeals of FOIAs for consideration by the full Commission. The Performance Evaluation and Records Management (PERM) staff in the Office of the Managing Director is responsible for the day-to-day management of the FOIA program. The FOIA Public Liaison and the FOIA Requester Service Center are located in PERM.

The FCC's FOIA implementing rules, 47 C.F.R. §§ 0.441 – 0.470, govern the availability of records at the FCC. Under our rules, the FOIA Requester Service Center receives all initial FOIA requests submitted to the FCC. The FOIA Requester Service Center assigns the requests to the operating Bureaus and staff offices of the Commission that are the custodian of the subject records for processing. Where multiple Bureaus and Offices are likely to have responsive records, the Requester Service Center assigns a lead Bureau or Office to prepare the initial FOIA response with the assistance of the other Bureaus or Offices. Each Bureau and Office is responsible for responding to the initial FOIA requests and ensuring compliance with the FOIA and the FCC's rules. In addition, the Enforcement Bureau's Field Offices are responsible for handling FOIA requests for records from the field. The FOIA Requester Service Center tracks and monitors FOIA requests to ensure timely responses.

The Commission has computerized most of its FOIA operations. The Commission has offered the opportunity to submit FOIA requests electronically since 1999, and tracked the internal processing of FOIA requests in an electronic database since 1993. More recently, during FY 2006, the Commission began scanning all paper-based FOIA requests and electronically transmitting them to the responsible Bureau or Office for processing. Bureau and Offices are required to provide electronic copies of their replies to the FOIA Requester Service Center. The Commission established an Intranet portal to act as a central electronic repository for all incoming FOIA requests and initial responses. Also available on the Intranet portal is a weekly FOIA report which is available to all interested employees.

The Commission makes available to the public many of its records and extensive information about its operations through its website (www.fcc.gov) and its public Reference Information Center. These sources facilitate access to information required by 5 U.S.C. § 552(a)(2) and keep the public informed about the activities of the FCC. Copies of the Commission's final opinions, statement of policy and interpretations, and administrative guidance, are posted to the Commission's website and are easily

accessible through the Commission's Internet-based Electronic Document Management System (EDOCS). EDOCS was implemented in 2000 and allows the public to conduct interactive online research and obtain documents from the web site. *The Daily Digest*, which is accessible through the Commission's main Internet page and through EDOCS, provides a brief, daily synopsis of Commission orders, new releases, speeches, public notices and other FCC documents that are released each business day. The FCC's website also allows electronic filing of comments in rulemaking proceedings, and public access to those comments, through its Electronic Comment Filing System (ECFS).

The Commission also has multiple, publicly-searchable databases on its web site that allow individuals to find out information about licensees and permittees of the Commission. For example, the public may generate tailored lists of AM, FM, and TV stations, view electronic applications for construction permit or license as well as Equal Employment Opportunity (EEO) and ownership reports, locate some historical documents pertaining to radio stations, find mailing addresses, and view a summary on the process of applying for a radio broadcast station. Various reports, citations, notices of apparent liabilities, etc., are posted on FCC's web site and accessible for viewing and downloading without having to file a FOIA request. The Commission's web site has been judged among the Top Ten Federal web sites, based on criteria of having a well-run, efficiently organized web site that offers useful services to citizens.¹

Members of the public seeking access to records that are not publicly available have several options. They can submit requests via the Commission's Electronic FOIA (E-FOIA) Request Form, found at www.fcc.gov/foia/; they can e-mail their FOIA request to the Commission at foia@fcc.gov; they can fax the request to (202 418-0521); or they can send the request via surface mail.

Information about filing a FOIA request is easily available to members of the public directly from a link on the FCC's main web page, or by searching the Internet with the common terms "FOIA" and "FCC", or by referencing the Commission's rules (47 C.F.R. §§ 0.445-0.470) on the Internet, at a library, or by visiting the Commission's various physical facilities. In addition, persons calling the FCC's Consumer Call Center may receive information about how to file a FOIA request. The Commission's FOIA program is also linked from the Department of Justice's web pages (<http://www.usdoj.gov/04foia/foiacontacts.html>), and the FirstGov web site links individuals directly to the Commission's FOIA web pages. Various industry and advocacy groups also advise their memberships on how to file FOIA requests with the Commission.

B. Areas of FOIA Operations Selected for Review.

The Commission conducted a comprehensive review of its FOIA operations, with particular emphasis on customer service. The review covered areas such as the FCC's internal processes, compliance with the FOIA statute and FCC's implementing rules and

¹ *Sixth Annual State and Federal e-Government Study*, Brown University (Sept. 8, 2005), available at: www.brown.edu/Administration/News_Bureau/2005-06/05-023.html.

regulations; and the administrative review process. Our review consisted of the following:

- Reviewing current and historical FOIA data from our database;
- Reviewing our FOIA vulnerability assessment;
- Interviewing FOIA staff throughout the agency and FOIA Legal Counsel in the Office of General Counsel; and
- Contacting the FCC Call Center to determine whether it was receiving calls concerning FOIA and how it might assist in handling such inquiries.

C. Summary of Review Results.

The review revealed that the vast majority of the Commission's FOIA operation is streamlined and efficient, operating within statutory time frames and resulting in a very low appeal rate. Specifically, the Commission's review of its FOIA program looked at each of the elements mandated by the Executive Order, including:

- Affirmative disclosure under subsection (a)(2);
- Proactive disclosure;
- Improvement of agency FOIA reference guide;
- Automated tracking capabilities;
- Electronic FOIA automated processing;
- Multi-track processing;
- Troubleshooting any existing problems (even minor ones) with existing request tracking;
- Expedited processing;
- Backlog reduction/elimination;
- Politeness/courtesy;
- Forms of communications with requesters;
- Personnel staffing and training; and
- Recycling of improvement information gleaned from FOIA Requester Service Centers.

Our review of the FCC's FOIA program noted that:

Affirmative and Proactive Disclosure – As described in Section A above, the Commission has an aggressive program of publicly posting materials on its web site regarding the Commission's policies and programs. Also as described in Section A above, an extensive array of information is routinely made available to the public on the FCC's Internet site and in the Commission's public reference rooms.

Automated Tracking and Electronic Automated Processing – The Commission has utilized automated systems in the processing of its FOIA requests since 1993 and an Access database is currently maintained to allow for tracking and reporting on FOIA requests. Beginning in 2005, the Commission began partial automated processing of its FOIA requests and in 2006 completed the transition to a completely automated processing system. This system keeps track of pending initial FOIA requests, and allows

PERM to contact the assigned Bureau or Office when a response has not met the statutory deadline (including extensions provided by statute or consent of the requester). A scanned version of each FOIA request and response is posted on PERM's intranet site. The Commission has also accepted electronic FOIA requests since 1999. The FCC does not use software to scan and redact records that are released to the public.

Multi-track Processing – The FCC is a small agency that divides its FOIA work among its Bureaus and Offices. Very little backlog exists for processing initial FOIA requests. For these reasons, the Commission does not use multi-track processing.

Troubleshooting Minor Problems – The Commission has minimized the likelihood of request tracking problems by increasing the visibility of the FOIA program via weekly internal reports. Managers in the FOIA chain-of-command routinely check and hold FOIA staff directly accountable for ensuring that requests are being processed in a timely manner. In addition, PERM assigns and tracks FOIA requests on an agency-wide basis and promptly follows up if any deadlines are missed.

Expedited Processing – Between FY 2001 and the end of FY 2005, the Commission received only one formal request for expedited processing. Because of the timely processing of most FOIA requests, expedited processing is not an issue at the FCC.

Backlog Reduction – In the areas of backlog reduction and elimination, the review found that:

a. Agency's expenditure of resources on FOIA compliance based on FY-2005 data:

Costs	Revenues from Fees	Net	Work Years to Process
\$1,270,635.00	\$9,747.42	\$1,260,887.58	14.37

b. Extent to which requests for records have not been responded to within the statutory time limit based on FY-2005 data:

FOIAs	# of Requests Received/ Processed	Requests Pending at Beginning of FY	Requests Pending at End of FY	Median # of Days That Requests Were Pending at the End of the FY	% Processed W/in Statutory Time or Permissible Extensions
Initial	609/608	31	32	10	81%
Appeals	9/8	9	10	252.5	0%

c. Extent to which requests were pending based on year-end FY-2005 data:

FOIAs	Pending More Than 1 Year	Pending Six Months – One Year	Pending Less Than Six Months
Initial	0	0	32
Appeals	5	2	3

d. Response to requests processed based on FY-2005 data:

FOIAs	Totally Granted	Partially Granted	Denied	Other Nondisclosure ²
Initial	219	149	18	222

FOIAs	Appeals Completely Upheld	Appeals Partially Reversed	Other Dispositions ³
Appeals	2	3	3

Politeness/Courtesy – The review also found that the Commission courteously and promptly responds to inquiries from FOIA requesters, as evidenced by e-mails, phone calls, and letters from the public indicating that our FOIA staff is professional, expert, polite, and courteous.

Recycling of Improvement Information – The Commission is now sharing with FCC FOIA staff the results of FOIA applications for review so that lessons learned on particular cases can be considered, and adjustments can be made if appropriate to the handling of future FOIA requests. Communications between the FOIA Liaison Center and the FCC's FOIA staff provides staff with guidance concerning processing and how to correct problems pointed out by the public.

Personnel/Training – Our review of the FCC's FOIA program indicated that we have sufficient staff assigned to handle processing FOIA requests. The FCC conducts internal FOIA training classes, brings in FOIA programs for staff, and regularly informs staff of FOIA training opportunities available from the Department of Justice and other entities.

However, the study revealed some weaknesses or deficiencies in our program. These included:

Forms of Communication with Requesters – In particular, our study identified a way that the Commission could improve customer service to FOIA requesters. Currently the

² The main reasons for non-disclosure were no responsive records (39 percent), withdrawal of the request (33 percent), and non-FCC records sought (11 percent).

³ Two requests were withdrawn and one request was found not to be a proper FOIA request.

Commission does not acknowledge receipt of FOIAs either manually or electronically. FOIA requesters are not certain as to whether their requests have been received. The Commission will remedy this weakness by implementing an acknowledgement reply process.

Extensions of Time – Our review revealed the need to better track extensions of time for initial FOIA requests, and our plan includes better tracking. Staff will also be instructed to include in initial FOIA responses reference to the extension of time taken under the statute or in agreement with the requester.

FOIA Reference Guide – The Commission also recognizes that it is not in compliance with 5 U.S.C. §§ 552(g) and 552(a)(2)(E). As a result, as described in Section E below, the Commission plans to develop a FOIA handbook. We also plan to develop a short FOIA fact sheet to assist the public.

Shortening the Administrative Appeals Process – The Commission recognizes that it now takes too long to respond to FOIA appeals. Under section 5 of the Communications Act, as amended, 47 U.S.C. § 155, all applications for review of FOIA decisions must be submitted to the full commission (consisting of five Commissioners) for a vote. This is a time-consuming process. In addition, the Commission actively tries to resolve FOIA applications for review through discussions with FOIA requesters. Nonetheless, there are delays in issuing decisions on FOIA appeals. The Commission expects to resolve all applications for review pending more than one year by the end of this year.

D. Areas Chosen For Improvement:

While the evidence of the Commission's review of its FOIA program demonstrates that generally we already have a streamlined and effective program, the Commission plans to undertake several initiatives to further improve our program. Our primary effort will be in the area of customer service, ensuring compliance with current statutes and FCC regulations, and substantially reducing backlogs of appeals.

E. Improvement Area Specifics:

1. Name: **Initial FOIA Processing Time Improvement**
2. Brief Statement of Goal(s)/Objective(s) (i.e., improvement(s) sought to be made):
Our review revealed that 19% of the initial FOIA requests may not have been handled within the statutory 20 working days or permissible extensions. However, we are not sure for these FOIAs whether the permissible statutory extensions were taken, or whether the requester agreed to extension of the time. We seek to ensure that at least 85 percent of the FOIAs filed with the agency are processed within the statutory time permitted, the permitted extensions under the statute, or by a time agreed to by the requester.
3. List of all distinct steps planned to be taken:
-- Notify Bureaus and Offices of approaching due dates.

- Require Bureaus and Offices to include in FOIA responses notation of time extensions.
 - 4. Time milestones (in relation to specific timetables and outcomes):
By December 31, 2006.
 - 5. Means of measurement of success (e.g., quantitative assessment of backlog reduction expressed in numbers of pending requests, percentages, or working days): Review response letters and processing times for initial FOIAs at end of fiscal year 2006 and again at end of fiscal year 2007.
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1. Name: **Reduce Backlog of Applications for Review Processing**
 2. Brief Statement of Goal(s)/Objective(s) (i.e., improvement(s) sought to be made):
To reduce backlog of applications for review.
 3. List of all distinct steps planned to be taken:
 - Draft Orders
 - Obtain internal approval
 - Circulate Order to Commissioners
 - Obtain final approval
 - Release Document
 4. Time milestones (in relation to specific timetables and outcomes):
Complete and release applications for reviews filed before December 31, 2005 by December 31, 2006, and to complete and release all AFRs filed after that date within one year.
 5. Means of measurement of success (e.g., quantitative assessment of backlog reduction expressed in numbers of pending requests, percentages, or working days): Release of decisions on all applications for review filed before December 31, 2005 by December 31, 2006.
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1. Name: **Develop a FCC FOIA Handbook.**
 2. Brief Statement of Goal(s)/Objective(s) (i.e., improvement(s) sought to be made):
To improve customer service and comply with 5 U.S.C. 552(g).
 3. List of all distinct steps planned to be taken:
 - Develop a draft handbook.
 - Obtain internal approval.
 - Finalize document.
 - Post on website.
 4. Time milestones (in relation to specific timetables and outcomes):
Document created and available by September 30, 2007.
 5. Means of measurement of success (e.g., quantitative assessment of backlog reduction expressed in numbers of pending requests, percentages, or working days): Product in place by September 30, 2007.
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1. Name: **Develop an Acknowledgement Process for FOIA Requests**
 2. Brief Statement of Goal(s)/Objective(s) (i.e., improvement(s) sought to be made):
To improve customer service and become more citizen-oriented.
 3. List of all distinct steps planned to be taken:
 - Draft language for acknowledgement.

- Obtain internal approval for language.
 - Talk with technical staff.
 - Have trial run.
 - Implement new system.
4. Time milestones (in relation to specific timetables and outcomes):
Have acknowledgement in place by December 31, 2006.
 5. Means of measurement of success (e.g., quantitative assessment of backlog reduction expressed in numbers of pending requests, percentages, or working days): Product in operation by December 31, 2006.
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1. Name: **Develop a FOIA Quick Fact Sheet.**
 2. Brief Statement of Goal(s)/Objective(s) (i.e., improvement(s) sought to be made):
To improve customer service and become more citizen-oriented.
 3. List of all distinct steps planned to be taken:
 - Draft fact sheet.
 - Obtain internal approval
 - Finalize fact sheet
 - Post fact sheet on web site.
 4. Time milestones (in relation to specific timetables and outcomes):
Develop FOIA Quick Fact Sheet by December 31, 2006.
 5. Means of measurement of success (e.g., quantitative assessment of backlog reduction expressed in numbers of pending requests, percentages, or working days): Product in place and on web site by December 31, 2006.
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1. Name: **Updating of FCC FOIA Implementing Regulations.**
 2. Brief Statement of Goal(s)/Objective(s) (i.e., improvement(s) sought to be made):
To ensure that the FCC's information access regulations reflect the current structure of the agency, the availability of records to the public and whether more records should be posted pursuant to subsection (a)(2), the proper procedures for processing FOIA requests and appeals, and current fee information.
 3. List of all distinct steps planned to be taken:
 - Review existing rules and draft proposed rule revisions
 - Obtain FCC approval for draft rules
 - Publish new rules in the Federal Register.
 4. Time milestones (in relation to specific timetables and outcomes):
-- Adopt new rules by December 31, 2007.
 5. Means of measurement of success (e.g., quantitative assessment of backlog reduction expressed in numbers of pending requests, percentages, or working days): Product in place by December 31, 2007.
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1. Name: **Updating of FCC Internal FOIA Directive.**
 2. Brief Statement of Goal(s)/Objective(s) (i.e., improvement(s) sought to be made):
To ensure that the FCC's staff processing of FOIA requests is the most efficient and compliant with the statute, regulations, and the Executive Order, revise the internal FCC FOIA Directive.
 3. List of all distinct steps planned to be taken:

- Review and redraft existing directive
- Obtain approval for revised directive
- Issue directive.
- 4. Time milestones (in relation to specific timetables and outcomes):
 - December 31, 2006
- 5. Means of measurement of success (e.g., quantitative assessment of backlog reduction expressed in numbers of pending requests, percentages, or working days): Product in place by December 31, 2006.

F. Improvement Areas Grouped by Time Periods.

1. Areas anticipated to be completed by 12/31/06:
 - Reduce number of initial FOIAs not handled within statutory time limit or extended time limit.
 - Reduce backlog of administrative applications for review.
 - Develop an acknowledgement process for FOIA requests.
 - Develop a FOIA Quick Fact Sheet.
 - Revise FCC FOIA Directive
2. Areas anticipated to be completed by 12/31/07
 - Develop an FCC FOIA Handbook.
 - Review and revise FCC FOIA regulations
3. Areas anticipated to be completed after 12/31/07

None.